

allow the parties to work to dismiss the above-captioned matter (the “Transferred Action”) in an efficient manner. (Transferred Action, ECF 34, 36.)

WHEREAS, on November 25, 2019, this Court so ordered the parties’ stipulation. (Transferred Action, ECF 37.)

WHEREAS, on September 24, 2019, BIW filed a third-party complaint against Congoleum in *Occidental Chemical Corp. v. 21st Century Fox America, et al.*, No 2:18-cv-11273-MCA-JAD (the “Occidental Action,” ECF 836), which had the effect of making redundant the new claims brought by Congoleum and BIW in the Transferred Action that relate to environmental claims relating to the larger Kearny Property (“Kearny Property” and “DVL Property” as used herein have the same definitions as used in ECF 124, filed in *DVL, Inc. et al. v. Congoleum Corp. et al.*, No. 2:17-cv-04261 (the “DVL Action”)).

WHEREAS, as stipulated pursuant to Transferred Action ECF 37 ¶ 3, BIW and Congoleum submitted amended cross-claims against each other on December 11, 2019 (in the DVL Action), which incorporated the claims each party alleged against the other in the Transferred Action, regarding indemnification/successorship of both the DVL Property and the Kearny Property, into its already filed claims in the DVL Action. (DVL Action, ECF 159, 160.) As stipulated, no new claims were alleged.

WHEREAS, as stipulated pursuant to Transferred Action ECF 37 ¶ 4, BIW and Congoleum filed amended answers and affirmative defenses on December 23, 2019 (in the DVL Action), responding to the amended claims filed on December 11, 2019, which incorporated the answers and affirmative defenses each party asserted in the Transferred Action regarding indemnification/successorship of the DVL Property and the Kearny Property, into the answers and

affirmative defenses in the DVL Action. (DVL Action, ECF 163, 164.) As stipulated, no new defenses were alleged.

WHEREAS, as stipulated in Transferred Action ECF 37 ¶ 5, on December 4, 2019, the parties filed a joint motion for leave to amend the pleadings in the DVL Action (DVL Action, ECF 156), in which (1) BIW stipulated that it would withdraw both of its motions for leave to amend its pleadings in the DVL Action because they will be moot by the fact that BIW will be able to add the contested affirmative defenses, which were already pled in the Transferred Action; and (2) Congoleum stipulated that it would withdraw its pending motion to consolidate in the DVL Action (as also stipulated in Transferred Action ECF 37 ¶¶ 7-8).

WHEREAS, on December 5, 2019, the Court so ordered the parties' joint motion for leave to amend the pleadings in the DVL Action (DVL Action, ECF 157) and terminated Dkt. Nos. 103, 114, and 115 in the DVL Action.

WHEREAS, as stipulated in Transferred Action ECF 37 ¶ 6, the parties agreed to dismiss their claims, without prejudice, in the Transferred Action, once the parties filed amended pleadings in the DVL Action, which has now transpired.

THEREFORE, THE PARTIES HEREBY STIPULATE AS FOLLOWS:

1. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the Transferred Action shall be dismissed, without prejudice.
2. BIW further stipulates that, so long as its claims regarding indemnification/successorship against Congoleum are resolved in either the DVL Action or the Occidental Action, BIW will not revive the Transferred Action claims against Congoleum in any other forum without Congoleum's consent.

Respectfully submitted,

Dated: January 29, 2020

/s/ Ralph J. Marra

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: January 30, 2020

SO ORDERED


Kevin McNulty, U.S.D.J.

Date: 1/30/2020